

1 NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND  
2 DECREED:

3 JURISDICTION AND VENUE

4 1. This Court has continuing jurisdiction over this  
5 matter as set forth in Paragraphs 1 (Jurisdiction), 22 (Retention  
6 of Jurisdiction) and 24 (Modification) of the 1992 Decree.

7 PARTIES BOUND

8 2. The parties bound by this Amendment are the  
9 Settling Defendants and the United States on behalf of NOAA, DOI  
10 and EPA and the State of California, on behalf of the State Lands  
11 Commission, the Department of Fish and Game, the Department of  
12 Parks and Recreation, DTSC and the Regional Board.

13 CONTINUING APPLICABILITY OF DECREE AND AMENDMENT

14 3. The provisions of the 1992 Decree shall remain in  
15 full force and effect, unaffected by this Amendment unless and  
16 until the Date of Final Approval of this Amendment as defined  
17 herein. Furthermore, if this Amendment is approved by the  
18 Court, following exhaustion of all rights of appeal, all terms  
19 and conditions of the 1992 Decree which are not modified by this  
20 Amendment shall remain in full force and effect.

21 APPLICABILITY OF AMENDMENT

22 4. The provisions of this Amendment shall be binding  
23 on and inure to the benefit of the United States and the State,  
24 and shall be binding on and inure to the benefit of the Settling  
25 Defendants, their officers, directors, employees, agents,  
26 predecessors, subsidiaries, affiliates, successors and assigns.  
27 No change in the ownership or organizational form or status of a  
28

1 Settling Defendant shall affect its rights or obligations under  
2 this Amendment.

3 EFFECT OF SETTLEMENT/ENTRY OF JUDGMENT

4 5. This Amendment was negotiated and executed by the  
5 Governmental Parties and the Settling Defendants hereto in good  
6 faith at arms length to avoid the resumption and continuation of  
7 expensive and protracted litigation between the Governmental  
8 Parties and the Settling Defendants and is a fair, reasonable,  
9 and equitable settlement of contested claims. The execution of  
10 this Amendment is not, and shall not constitute or be construed  
11 as, an admission of liability by any Party, nor is it an  
12 admission of any of the factual allegations set out in the Second  
13 Amended Complaint or Counterclaims or an admission of violation  
14 of any law, rule, regulation, or policy by any of the  
15 Governmental Parties and the Settling Defendants to this  
16 Amendment.

17 6. Upon the Date of Final Approval of this Amendment,  
18 the 1992 Decree and this Amendment shall constitute a final  
19 judgment between and among the Governmental Parties and the  
20 Settling Defendants, as set forth in paragraph 4.

21 DEFINITIONS

22 7. To the extent any term is not expressly defined in  
23 this Amendment, this Amendment incorporates the definitions set  
24 forth in Section 101 of CERCLA, 42 U.S.C. § 9601, and in the 1992  
25 Decree. Whenever the following terms are used in this Amendment,  
26 they shall have the following meanings:

27 A. "Date of Execution of this Amendment" shall  
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1 mean the date by which this Amendment has been signed by all of  
2 the following: the authorized representative of each of the  
3 Settling Defendants, the State, and by the Assistant Attorney  
4 General of the Environment and Natural Resources Division of the  
5 United States Department of Justice.

6 B. "Date of Lodging of this Amendment" shall mean the  
7 date that this Amendment is lodged with the District Court.

8 C. "Date of Initial Approval of this Amendment" shall  
9 mean the date on which this Amendment has been initially approved  
10 and signed by the United States District Court.

11 D. "Date of Final Approval of this Amendment" shall  
12 mean the later of (1) the date on which the District Court has  
13 approved and entered this Amendment as a judgment and all  
14 applicable appeal periods have expired without an appeal being  
15 filed, or (2) if an appeal is taken, the date on which the  
16 District Court's judgment is affirmed and there is no further  
17 right to appellate review.

18 E. "Montrose Natural Resource Damages ("NRD") Area"  
19 for purposes of this Amendment shall mean the area in and around  
20 the Channel Islands, including Santa Catalina Island, the Palos  
21 Verdes shelf, the San Pedro Channel and the Los Angeles and Long  
22 Beach Harbors as described in the Complaint and as described in  
23 the draft Damage Assessment Plan and draft Injury Determination  
24 Plan published by the Trustees on February 6, 1990 and March 8,  
25 1991, respectively, Santa Monica Bay, and San Pedro Bay.

26 F. "Joint Outfall System" shall mean that  
27 wastewater collection, treatment and disposal facility of certain  
28 county sanitation districts of Los Angeles County discharging

1 effluent through the White's Point Outfall and consisting of the  
2 JWPCP and the associated sewers, pumping plants, inland water  
3 reclamation plants, treatment plants, treatment plant outfall  
4 sewers and incidental sanitation works operated pursuant to the  
5 1995 Joint Outfall Agreement by LACSD, as defined therein,  
6 including subsequent modifications to that system, as  
7 contemplated by that Agreement.

8           G. "Damage Assessment Costs" shall mean all  
9 costs, including all related enforcement costs, associated with  
10 the planning, design, implementation and oversight of the  
11 Trustees' damage assessment process, which addresses the fact,  
12 extent and quantification of the injury to, destruction of or  
13 loss of natural resources and the services provided by these  
14 resources resulting from releases of hazardous substances alleged  
15 in the First Claim for Relief of the Complaint, and with the  
16 planning of restoration or replacement of such natural resources  
17 and the services provided by those resources, or the planning of  
18 the acquisition of equivalent resources or services, and any  
19 other costs necessary to carry out the Trustees' responsibilities  
20 with respect to those natural resources.

21           H. "Natural Resource Damages" shall mean damages,  
22 including loss of use, restoration costs, resource replacement  
23 costs of equivalent resource values, Damage Assessment Costs, and  
24 any other costs incurred or to be incurred by the Trustees or any  
25 other person pursuant to Trustee approval, authorization, or  
26 direction, with respect to injury to, destruction of, or loss of  
27 any and all natural resources in and around the Montrose NPL Site  
28 and the Montrose NRD Area.

1 I. "Montrose NPL Site" for purposes of this Amendment,  
2 shall mean and includes, but is not limited to, the Montrose DDT  
3 Plant Property, and any other areas impacted by releases of  
4 hazardous substances from the Montrose DDT Plant Property as  
5 determined by EPA, including but not limited to: the real  
6 property located at 1401 West Del Amo Boulevard, Los Angeles,  
7 California and owned by Jones Chemicals, Inc.; those portions of  
8 the Normandie Avenue Ditch adjacent to and south of 20201 South  
9 Normandie Avenue; the Kenwood Drain; the Torrance Lateral; the  
10 Dominguez Channel (from Laguna Dominguez to the Consolidated  
11 Slip); the portion of the Los Angeles Harbor known as the  
12 Consolidated Slip from the mouth of the Dominguez Channel south  
13 to, but not including or proceeding beyond, Pier 200B and Pier  
14 200Y; the LACSD's J.O. "D" sewer from manholes D33 to D5  
15 (approximately Francisco Street to 234th Street); the District 5  
16 Interceptor sewer from manholes A475 to A442 (approximately  
17 Francisco Street to Sepulveda Boulevard); the real property on  
18 which the sewer rights-of-way are located for those portions of  
19 the District 5 Interceptor and J.O. "D" sewer identified above;  
20 the real property burdened by the adjacent railroad right-of-way  
21 for those portions of the District 5 Interceptor and J.O. "D"  
22 sewer identified above; the "Montrose CERCLA Removal Site" as  
23 defined in EPA Region IX's Unilateral Administrative Order 95-18,  
24 Findings of Fact at § 3, ¶ 2, dated June 7, 1995; those areas of  
25 the Palos Verdes shelf where effluent-affected DDT and/or PCB-  
26 contaminated sediments have come to be located, and any other  
27 areas that are or EPA determines to be part of the Palos Verdes  
28 Shelf Investigation (including any portions of the Santa Monica

1 Bay or Los Angeles/Long Beach Harbors should EPA in the future  
2 determine that those areas are part of the Palos Verdes Shelf  
3 Investigation.

4 J. "Response Costs" as used in this Amendment  
5 shall mean all costs of response as provided in Section 107(a)(1-  
6 4)(A) of CERCLA, 42 U.S.C. § 9607(a)(1-4)(A), and as defined in  
7 Section 101(25) of CERCLA, 42 U.S.C. § 9601(25), that the United  
8 States, the State, or any other person have incurred or will  
9 incur with respect to the Montrose NPL Site and the Montrose NRD  
10 Area.

11 K. "Montrose DDT Plant Property" shall mean for the  
12 purposes of this Amendment the thirteen (13) acre parcel at 20201  
13 South Normandie Avenue, Los Angeles, California 90044, which is  
14 the site of Montrose Chemical Corporation of California's former  
15 DDT production and formulation plant.

16 L. "Parties" shall mean each of the signatories to  
17 this Amendment.

18 M. "Settling Defendants" shall mean for purposes of  
19 this Amendment only the Potlatch Corporation, the Simpson Paper  
20 Company, and the Simpson Investment Company.

21 PAYMENT TERMS

22 8. All payments pursuant to the 1992 Decree have been  
23 made. These payments constitute compliance with both this  
24 Amendment and the 1992 Decree. Within ten working (10) days of  
25 the Date of Final Approval of this Amendment, Plaintiffs shall  
26 petition the District Court to release and disburse a portion of  
27 these funds to EPA and DTSC (the "Response Settlement Amount")  
28 plus all interest accrued on the final payment made on January 4,

1 1996. The disbursement of the Response Settlement Amount shall  
2 be as described in paragraphs 9 and 10 below. Settling  
3 Defendants agree to not oppose Plaintiffs' petition for release  
4 and disbursement of the Response Settlement Amount.

5 9. Disbursement to DTSC shall be in the amount of  
6 \$70,000 plus all interest accrued thereon.

7 10. Disbursement to EPA shall be in the amount of  
8 \$3,930,000 plus all interest accrued thereon. These funds shall  
9 be specifically disbursed as follows: 1) \$150,000 for past  
10 Response Costs incurred by EPA with respect to the Montrose NPL  
11 Site for deposit by EPA in the Hazardous Substance Superfund and  
12 2) \$3,780,000 together with all remaining interest for deposit by  
13 EPA in the "United States Environmental Protection Agency, Palos  
14 Verdes Shelf Special Account." All disbursements shall reference  
15 the Montrose Chemical Corporation of California Superfund Site,  
16 Site # 9T26, DOJ Case # 90-11-3-511, U.S.A.O. file number  
17 9003085.

18 11. EPA commits to expend the settlement funds paid by  
19 Settling Defendants and disbursed to the United States  
20 Environmental Protection Agency, Palos Verdes Shelf Special  
21 Account for response activities with respect to the Palos Verdes  
22 shelf. All such monies not so used by EPA may be deposited in  
23 the Hazardous Substance Superfund but only after completion of  
24 the EPA response actions in connection with the Palos Verdes  
25 shelf DDT and PCB contaminated sediments.

26 COVENANTS NOT TO SUE FOR NATURAL RESOURCE DAMAGES

27 12. Except as specifically provided in Paragraphs 13  
28 and 14 of this Amendment, the United States, and the State, and

1 agencies and instrumentalities thereof, each hereby covenants not  
2 to sue or to take any other civil or administrative action  
3 against the Settling Defendants for any and all civil or  
4 administrative liability to the United States, the State, and  
5 agencies or instrumentalities thereof, for Natural Resource  
6 Damages under CERCLA, 42 U.S.C. §§ 9601, et seq., or under any  
7 other federal, state, or common law. The 1992 Decree covenants  
8 shall remain in effect until the Date of Final Approval of this  
9 Amendment.

10 RESERVATION OF RIGHTS FOR NATURAL RESOURCE DAMAGES

11 13. A. Notwithstanding any other provision of this  
12 Amendment, the Trustees reserve the right to institute  
13 proceedings against the Settling Defendants in this action or in  
14 a new action seeking recovery of Natural Resource Damages, based  
15 on (1) injury to, destruction of, or loss of natural resources  
16 resulting from conditions which were unknown to the Trustees on  
17 the Date of Lodging of this Amendment ("Unknown Conditions"); or  
18 (2) information received by the Trustees after the Date of  
19 Lodging of this Amendment which indicates there is injury to,  
20 destruction of, or loss of natural resources, of a type unknown  
21 to the Trustees as of the Date of Lodging of this Amendment ("New  
22 Information").

23 B. Each of the following shall not be considered to  
24 be Unknown Conditions or New Information within the meaning of  
25 Paragraph 13.A (1) or (2): (1) an increase solely in the  
26 Trustees' assessment of the magnitude of the injury, destruction  
27 or loss to natural resources, or in the estimated or actual  
28 Natural Resource Damages; (2) a determination by the Trustees



1 that a previously identified natural resource injury was caused  
2 by the Settling Defendants' alleged release of a hazardous  
3 substance, including hazardous substances other than PCBs or DDT;  
4 or (3) any Natural Resource Damages arising from any future  
5 release of hazardous substances now present in the sediments of  
6 the Palos Verdes shelf, to the extent that the release resulted  
7 from:

- 8 (a) LACSD's sampling activities (by coring, trawling, or  
9 otherwise);
- 10 (b) LACSD's institution of full secondary treatment of  
11 wastewater at the JWPCP and the discharge of such wastewater  
12 through the White's Point Outfall;
- 13 (c) any response activity or similar activity performed by  
14 or at the direction of any federal or state governmental  
15 body or any other person;
- 16 (d) any act of God; or
- 17 (e) an earthquake.

18 C. The Settling Defendants reserve their right to  
19 contest any claims allowed by Paragraph 13.A of this Amendment,  
20 and the Settling Defendants do not by consenting to this  
21 Amendment waive any defense to such claims, except that the  
22 Settling Defendants covenant not to assert, and may not maintain,  
23 any defense based upon principles of waiver, res judicata,  
24 collateral estoppel, issue preclusion, claim splitting, or other  
25 defense based upon the contention that the claims that are  
26 allowed by Paragraph 13.A of this Amendment were or should have  
27 been brought in the instant case. In the event that the Trustees  
28 institute proceedings under Paragraph 13.A of this Amendment, the

1 Settling Defendants reserve their right to assert potential  
2 cross-claims, counterclaims or third party claims against the  
3 United States or the State, or any employee, officer, agency or  
4 instrumentality thereof, relating to such claims asserted by the  
5 Trustees pursuant to Paragraph 13.A. Nothing in this Amendment  
6 shall be deemed to constitute preauthorization of a claim within  
7 the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611.

8           D. In addition to defenses that may be asserted by  
9 the Settling Defendants pursuant to Paragraph 13.C above, and a  
10 defense that a future release of hazardous substances now present  
11 in the sediments of the Palos Verdes shelf was the result of  
12 conditions or information known to the Trustees on the Date of  
13 Lodging of this Amendment, the Settling Defendants will not be  
14 liable for Natural Resource Damages arising from a future release  
15 of hazardous substances now present in the sediments of the Palos  
16 Verdes shelf, to the extent that the release resulted from: (1)  
17 LACSD's sampling activities (by coring, trawling, or otherwise);  
18 (2) LACSD's institution of full secondary treatment of wastewater  
19 at the JWPCP and the discharge of such wastewater through the  
20 White's Point Outfall; (3) any response activity or similar  
21 activity performed by or at the direction of any federal or state  
22 governmental body or any other person; (4) any act of God; or (5)  
23 an earthquake.

24           14. Notwithstanding any other provision of this  
25 Amendment, the covenants not to sue in Paragraph 12 shall apply  
26 only to matters addressed in Paragraph 12 and specifically shall  
27 not apply to the following claims:

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1           A.     claims based on a failure by the Settling Defendants to  
2 satisfy the requirements of this Amendment;  
3           B.     claims for criminal liability; and  
4           C.     claims arising from the past, present, or future  
5 disposal, release or threat of release of hazardous substances  
6 that do not involve the Montrose NRD Area or the Montrose NPL  
7 Site.

8                               COVENANTS NOT TO SUE FOR RESPONSE COSTS

9           15.    Except as specifically provided in Paragraphs 16  
10 and 17 of this Amendment, the United States and the State, and  
11 agencies and instrumentalities thereof, each hereby covenants not  
12 to sue or to take any other civil or administrative action  
13 against the Settling Defendants for any and all civil or  
14 administrative liability to the United States, the State, and  
15 agencies or instrumentalities thereof, to compel response actions  
16 or to recover Response Costs including, but not limited to, costs  
17 for studies and evaluations of the area covered by response  
18 actions under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606  
19 and 9607, or pursuant to the California Hazardous Substances  
20 Account Act, California Health and Safety Code §§ 25300 et seq.,  
21 or any other state statute or state common law. In addition, the  
22 United States and the State, and agencies and instrumentalities  
23 thereof, each hereby covenants not to sue or take administrative  
24 action against the Settling Defendants to compel response actions  
25 or to recover Response Costs incurred or to be incurred in the  
26 future in connection with the Montrose NPL Site under the  
27 Resource Conservation and Recovery Act ("RCRA") Sections 3008(h),  
28 3013, or 7003, 42 U.S.C. §§ 6928(h), 6934 and 6973 or California

1 Health and Safety Code § 25187. The State, and agencies and  
2 instrumentalities thereof, each hereby further covenants not to  
3 sue or take administrative action against the Settling  
4 Defendants, to compel response activities or to recover Response  
5 Costs incurred or to be incurred in the future in connection with  
6 the Montrose NPL Site under Section 7002 of RCRA, 42 U.S.C. §  
7 6972. These covenants not to sue are in addition to Paragraph 13  
8 of the 1992 Decree and Paragraph 12 of this Amendment and shall  
9 become effective upon the Date of Initial Approval of this  
10 Amendment, and shall remain in effect so long as the Settling  
11 Defendants are fulfilling their obligations under this Amendment,  
12 subject to the Governmental Parties' and the Settling Defendants'  
13 rights to void this Amendment pursuant to Paragraph 27 herein.

14 RESERVATION OF RIGHTS FOR RESPONSE COSTS

15 16. The covenants set forth in Paragraph 15 pertain  
16 only to matters expressly specified therein, and extend only to  
17 the Settling Defendants. Any claim or defense which the United  
18 States or the State has against any other person or entity not a  
19 party to this Amendment is expressly reserved. The United States  
20 and the State reserve, and this Amendment is without prejudice  
21 to, all other rights and claims against the Settling Defendants,  
22 individually or collectively, with respect to all other matters,  
23 including but not limited to, the following:

24 A. any and all claims against a Settling  
25 Defendant based upon or resulting from a failure to meet a  
26 requirement of this Amendment;

27 B. claims for criminal liability;

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1 C. claims for violations of any other federal or state  
2 law or permit;

3 D. claims arising from the presence of a  
4 hazardous substance at any location outside of the Montrose NPL  
5 Site including, but not limited to, the proposed Del Amo NPL Site  
6 as it may be defined by EPA.

7 17. In addition to the reservations set out in  
8 Paragraph 16 hereto, the United States and the State reserve, and  
9 this Amendment is without prejudice to, the right to institute  
10 proceedings in this action or in a new action seeking to compel  
11 the Settling Defendants to reimburse the United States or the  
12 State for additional Response Costs if subsequent to the Date of  
13 Execution of this Amendment:

14 A. the United States or the State receives, in whole  
15 or in part, information unknown to EPA, DTSC, or the Regional  
16 Board as of the Date of Lodging of this Amendment, indicating  
17 that after the Date of Lodging of this Amendment the Settling  
18 Defendants released one or more hazardous substances that come to  
19 be located at the Palos Verdes shelf, and that EPA, DTSC, or the  
20 Regional Board determines may be a threat to human health or the  
21 environment, provided that the foregoing shall not be deemed to  
22 apply to any re-exposure or resuspension on the Palos Verdes  
23 shelf of the DDT or PCB-contaminated sediments currently located  
24 there, including but not limited to, such re-exposure or  
25 resuspension of sediments resulting from:

26 (i) LACSD's sampling activities (by coring, trawling, or  
27 otherwise);

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1 (ii) LACSD's institution of full secondary treatment of  
2 wastewater at the JWPCP and the discharge of such wastewater  
3 flows through the White's Point Outfall;

4 (iii) any response activity or similar activity performed by  
5 or at the direction of any federal or state governmental  
6 body or any other person;

7 (iv) any act of God; or

8 (v) an earthquake.

9 B. the United States or the State discovers a  
10 condition at the Montrose NPL Site, that EPA, DTSC, or the  
11 Regional Board determines may be a threat to human health or  
12 welfare or the environment, and that was unknown to EPA, DTSC, or  
13 the Regional Board prior to the Date of Lodging of this  
14 Amendment.

15 18. The Settling Defendants reserve their right to  
16 contest any claims allowed by Paragraphs 16 and 17 of this  
17 Amendment and the Settling Defendants do not by consenting to  
18 this Amendment waive any defenses to such claims, except that the  
19 Settling Defendants covenant not to assert, and may not maintain,  
20 any defense or claim based upon principles of waiver, res  
21 judicata, collateral estoppel, issue preclusion, claim splitting,  
22 or other defense based upon any contention that the claims that  
23 are allowed by Paragraphs 16 and 17 were or should have been  
24 brought in the instant case. In the event that the United States  
25 or the State institutes proceedings under Paragraphs 16 or 17 of  
26 this Amendment, the Settling Defendants reserve the right to  
27 assert potential cross-claims, counterclaims or third party  
28 claims against the United States, the State, or any employee,

1 officer, agency or instrumentality thereof, relating to such  
2 claims asserted by the United States or the State, and the  
3 agencies or instrumentalities thereof. Nothing in this Amendment  
4 shall be deemed to constitute preauthorization of a claim within  
5 the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40  
6 C.F.R. § 300.700(d).

7 COVENANTS BY SETTLING DEFENDANTS

8 19. Subject to the rights reserved in Paragraphs 13.C  
9 and 18, each Settling Defendant hereby covenants not to sue or to  
10 assert any administrative claim or cause of action of any kind  
11 against the United States, or any employee, officer, agency or  
12 instrumentality thereof, or the State, or any employee, officer,  
13 agency or instrumentality thereof (but not including counties,  
14 cities, local governmental entities or sanitation districts) with  
15 respect to the Montrose NPL Site, including but not limited to:  
16 (1) any direct or indirect claim for reimbursement from the  
17 Hazardous Substance Superfund established pursuant to 26 U.S.C. §  
18 9507, under Sections 106(b)(2), 111, 112, or 113 of CERCLA, 42  
19 U.S.C. §§ 9606(b)(2), 9611, 9612, or 9613, any claim pursuant to  
20 the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b) and 2671, et  
21 seq., or any claim arising from any express or implied contract  
22 pursuant to 28 U.S.C. § 1346(a)(2) or 28 U.S.C. § 1491(a)(1), or  
23 any claim pursuant to the California Hazardous Substance Account  
24 Act, California Health and Safety Code §§ 25300, et seq., or  
25 under any other provision of law; (2) any claim related to the  
26 Montrose NPL Site or the Montrose NRD Area under Sections 107 or  
27 113 of CERCLA, 42 U.S.C. §§ 9607 or 9613, against the United  
28 States, including any department, agency, or instrumentality of